



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding HARWOOD HOLDINGS CORPORATION and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ARI-C

### **Introduction**

This hearing dealt with the Landlord's application pursuant to sections 43(1)(b) and 43(3) of the Residential Tenancy Act (the Act) and section 23.1 of the Residential Tenancy Regulation (the Regulation) for an additional rent increase for capital expenditure.

The parties listed on the cover page to this Decision attended the hearing on June 20, 2024.

The Landlord's representative stated that each Tenant was served with the proceeding package and copies of the Landlord's evidence in support of the application on March 22, 2024, by delivery of the package to the door of each rental unit. The Landlord's representative submitted a completed proof of service form to confirm this service.

The Tenants in attendance confirmed service of Notice of Dispute Resolution Proceeding and documentary evidence filed by the Landlord.

### **Issue for Decision**

- Is the Landlord entitled to impose an additional rent increase for capital expenditures?

### **Background and Evidence**

While I have considered the submission of the parties and documentary evidence, not all details of the submissions are reproduced here. The relevant and important evidence related to this application before me has been reviewed, and my findings are set out below in the analysis portion of this Decision.

The capital expenditure (the "Work") incurred that is the subject of this application consisted of the replacement and upgrade of the boiler for a residential tenancy building.

The subject residential tenancy building was constructed in 1958 and is a three-storey walk-up. The Landlord's representative testified there are 32 units in the building.

At the time of replacement, the boiler in the building was approximately 9 to 10 years old. The Landlord submitted a copy of correspondence from the plumbing company which serviced the boiler as well as installed the replacement to confirm the age and their maintenance of the boiler. The Landlord also provided copies of maintenance records (receipts for service) paid dating from January 9, 2018 to January 23, 2023.

The plumbing contractor's letter further provided that the replacement boiler was energy efficient (97.5% high efficiency tankless boiler) with corresponding expected reduced energy consumption (natural gas usage) by 30%. The Landlord provided a statement from the gas utility company for the usage of gas in the building attributable to the boiler. The plumbing company representative stated in his correspondence that the boiler was at 60-70% of mid-efficiency and due to malfunctioning of the unit, was close to expiration of its useful life.

The Landlord was issued an installation permit for the new boiler by the local government authority on September 11, 2023. A copy of the installation permit was provided in evidence. The work was completed and the Landlord paid for the Work on November 16, 2023, totaling \$128,992.50. A copy of the paid invoice together with photographs of the installed boiler were submitted by the Landlord. The representative testified that there was no third-party source for payment of the replacement boiler, and no subsidies or grants were applied toward payment.

The plumbing company representative's correspondence further stated the replacement boiler has an expected useful life to exceed 20 years.

Tenant C.N. stated he had no objection to the replacement boiler work. Tenant K.A. testified she had resided in the building for 14 years and sought clarification on the rent increase as provided in the Landlord's application. The Landlord noted that the rent increase set forth in the application was generated by the RTB system. Tenant J.G. noted that the invoices from the plumbing contractor to the Landlord were to a different company name. The Landlord's representative stated that he was unaware of the details of the corporate structure between the Landlord's corporation and the entity that was billed and paid, but stated he believed that the corporation that paid was an umbrella corporation under which the Landlord operated. Tenant J.G. also inquired as regarding the rent increase as calculated and as against annual rent increases (responses to her inquiries are found in the regulations cited herein).

## Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. As the dispute related to the Landlord's application for an additional rent increase based upon eligible capital expenditures, the Landlord bears the burden of proof in support of its application.

Section 43(1)(b) of the Act allows a Landlord to impose an additional rent increase in an amount that is greater than the amount calculated under the Regulations by making an application for dispute resolution.

### 1. Statutory Framework

Sections 21.1, 23.1, and 23.2 of the Regulation set out the framework for determining if a landlord is entitled to impose an additional rent increase for capital expenditures. To summarize, the landlord must prove the following, on a balance of probabilities:

- the landlord has not successfully applied for an additional rent increase against these tenants within the last 18 months (s. 23.1(2));
- the number of specified dwelling units on the residential property (s. 23.2(2));
- the amount of the capital expenditure (s. 23.2(2));
- that the Work was an *eligible* capital expenditure, specifically that:
  - o the Work was to repair, replace, or install a major system or a component of a major system (S. 23.1(4));
  - o the Work was undertaken for one of the following reasons:
    - to comply with health, safety, and housing standards (s. 23.1(4)(a)(i));
    - because the system or component:
      - was close to the end of its useful life (s. 23.1(4)(a)(ii)); or
      - had failed, was malfunctioning, or was inoperative (s. 23.1(4)(a)(ii));
    - to achieve a reduction in energy use or greenhouse gas emissions (s. 23.1(4)(a)(iii)(A)); or
    - to improve the security of the residential property (s. 23.1(4)(a)(iii)(B));
  - o the capital expenditure was incurred less than 18 months prior to the making of the application (s. 23.1(4)(b)); and
  - o the capital expenditure is not expected to be incurred again within five years (s. 23.1(4)(c)).

Tenants may defeat an application for an additional rent increase for capital expenditure if they can prove on a balance of probabilities that the capital expenditures were incurred:

- for repairs or replacement required because of inadequate repair or maintenance on the part of the landlord (s. 23.1(5)(a)); or
- for which the landlord has been paid, or is entitled to be paid, from another source (s. 23.1(5)(a)).

If a landlord discharges their evidentiary burden and the tenant fails to establish that an additional rent increase should not be imposed (for the reasons set out above), the landlord may impose an additional rent increase pursuant to sections 23.2 and 23.3 of the Regulation.

## 2. Prior Application for Additional Rent Increase

In this matter, there have been no prior applications for an additional rent increase within the last 18 months before the application was filed. The Landlord's representative testified he had been the property manager for the prior 4 years and no application for additional rent increase had been filed in that time.

## 3. Number of Specified Dwelling Units

Section 23.1(1) of the Regulation contains the following definitions:

"dwelling unit" means the following:

- (a) living accommodation that is not rented and not intended to be rented;
- (b) a rental unit;

[...]

"specified dwelling unit" means

- (a) a dwelling unit that is a building, or is located in a building, in which an installation was made, or repairs or a replacement was carried out, for which eligible capital expenditures were incurred, or
- (b) a dwelling unit that is affected by an installation made, or repairs or a replacement carried out, in or on a residential property in which the dwelling unit is located, for which eligible capital expenditures were incurred.

There are 32 specified dwelling units to be used for calculation of the additional rent increase.

#### 4. Amount of Capital Expenditure

The Landlord is claiming the total amount of **\$128,992.50** as outlined in the above table for capital expenditures.

#### 5. Is the Work an *Eligible* Capital Expenditure?

As stated above, in order for the Work to be considered an eligible capital expenditure, the landlord must prove the following:

- the Work was to repair, replace, or install a major system or a component of a major system
- the Work was undertaken for one of the following reasons:
  - to comply with health, safety, and housing standards;
  - because the system or component:
    - was close to the end of its useful life; or
    - had failed, was malfunctioning, or was inoperative
  - to achieve a reduction in energy use or greenhouse gas emissions; or
  - to improve the security of the residential property;
- the capital expenditure was incurred less than 18 months prior to the making of the application;
- the capital expenditure is not expected to be incurred again within five years.

I will address these elements in turn.

Section 21.1 of the Regulation defines “major system” and “major component”:

"major system", in relation to a residential property, means an electrical system, mechanical system, structural system or similar system that is integral

(a) to the residential property, or

(b) to providing services to the tenants and occupants of the residential property;

"major component", in relation to a residential property, means

(a) a component of the residential property that is integral to the residential property, or

(b) a significant component of a major system;

RTB Policy Guideline 37 provides examples of major systems and major components:

Examples of major systems or major components include, but are not limited to, the foundation; load bearing elements such as walls, beams and columns; the roof; siding; entry doors; windows; primary flooring in common areas; pavement in parking facilities;

electrical wiring; heating systems; plumbing and sanitary systems; security systems, including things like cameras or gates to prevent unauthorized entry; and elevators.

I find the boiler system is a major component of the building. I find the Work was done to increase safety and reliability as the boiler was nearing its useful life. I find this is sufficient to satisfy the requirements of the Regulation. I further find based upon the evidence presented from the plumbing contractor that the boiler replacement was required because the boiler was approaching its expected serviceable life as permitted by 23(1)(4)(a)(ii) of the regulations.

Residential Tenancy Branch Policy Guideline 37 states:

A capital expenditure is considered “incurred” when payment for it is made.

I accept the Landlords evidence that the final payment for the Work was made November 16, 2023; within 18 months of the Landlord making this application on March 15, 2024.

The Landlord provided the receipts for the capital expenditure, and I find the final payment was incurred less than 18 months prior to making the application and I find, based upon the useful life of the boiler and the plumbing contractor’s statement, it is reasonable to conclude that this capital expenditure will not be expected to incur again within five years.

As stated above, the Regulation limits the reasons which a tenant may raise to oppose an additional rent increase for capital expenditure. In addition to presenting evidence to contradict the elements the landlord must prove (set out above), the tenant may defeat an application for an additional rent increase if they can prove that:

- the capital expenditures were incurred because the repairs or replacement were required due to inadequate repair or maintenance on the part of the landlord, or
- the landlord has been paid, or is entitled to be paid, from another source.

The Tenants did not contest the elements for the rent increase which the Landlord was required to prove.

Therefore, I find the Landlord completed necessary repairs, had to pay for such repairs, and is bound only by the statutory framework in seeking the capital expenditures, and not the arguments described above.

Based on the above, I find the Landlord is entitled to recover the amount of **\$128,992.50.**

## Summary Disposition

The Landlord has been successful in this application. The Landlord has established, on a balance of probabilities, all elements required to impose an additional rent increase for total capital expenditures of **\$128,992.50**.

Section 23.2 of the Regulation sets out the formula to be applied when calculating the amount of the additional rent increase as the number of specific dwelling units divided by the amount of the eligible capital expenditure divided by 120. In this case, I have found that there are 32 specified dwelling unit and that the total amount of the eligible capital expenditures is the amount of **\$128,992.50**.

I find the Landlord has established the basis for an additional rent increase for capital expenditures of **\$33.59** ( $128,992.50 \div 72 \div 120 = 33.59$ ). If this amount exceeds 3% of a tenant's monthly rent, the Landlord may not be permitted to impose a rent increase for the entire amount in a single year.

I find the additional rent increase of capital expenditures of **\$33.59** per rental unit per month as per the formula set out in the regulations and illustrated in RTB Policy Guideline 37C.

The parties may refer to RTB Policy Guideline 40, section 23.3 of the Regulation, section 42 of the Act (which requires that a landlord provide a tenant three months' notice of a rent increase), and the additional rent increase calculator on the RTB website for further guidance regarding how this rent increase made be imposed.

## Conclusion

The Landlord is successful on this application. I grant the application for an additional rent increase for capital expenditure of **\$128,992.50**. The Landlord must impose this increase in accordance with the Act and the Regulation.

I order the Landlord to serve all Tenants with a copy of this decision in accordance with section 88 of the Act.

This decision is issued on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 30, 2024

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Residential Tenancy Branch